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No. 478

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

AMALGAMATED FOOD EMPLOYEES UNION
LOCAL 590, *et al.*,

Petitioners,

v.

LOGAN VALLEY PLAZA, INC. and WEIS MARKETS, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

Question Presented

It is the public policy of the Commonwealth of Pennsylvania that peaceful picketing on a retailer's private property, within a shopping center, is a trespass. The Supreme Court of Pennsylvania, in declaring this policy, affirmed a preliminary injunction regulating such picketing. The question presented is whether, under these circumstances, the Petitioners' freedom of speech was abridged.

Statement of the Case

Weis Markets, Inc. (Weis) is the owner-occupant of a supermarket in the shopping center known as Logan Valley Plaza, Inc. (Logan). Weis owned the real property on which it constructed its store, porch and parcel pick-up zone, and has retained ownership in this property. Logan owns all other property in the shopping center (R. 9, 42, 51, 52).

The only other occupant of the shopping center at the commencement of this proceeding was a Sears, Roebuck store and service station (R. 51). Construction of other stores was contemplated (R. 51). The plaza is located at Altoona, Pennsylvania, within the intersection of public highways known as Plank Road (U.S. Route 220) to the east, and Goods Lane to the south (R. 87). The main entrances used by customers of Weis are Entrances 1 and 2 off of Goods Lane (R. 49, 50; see photograph, Ex. No. 1, R. 80). The distance between the store and these two entrances is 350 feet (R. 35).

On December 8, 1965, Weis opened for business. It posted a sign on its property prohibiting trespassing or soliciting on its property (R. 33, 49).

On December 17, 1965, picketing was commenced by Petitioners (hereinafter referred to as the union) "directly in front of the (Weis) store," (R. 54, 55) and continued daily (except December 24, 1965) until December 27, 1965 (R. 28, 29, 31, 32), when it was enjoined.

The pickets paraded within Weis' parcel pick-up zone. This zone is located alongside the front of the store; it is four to five feet wide, 30-40 feet in length, and is marked

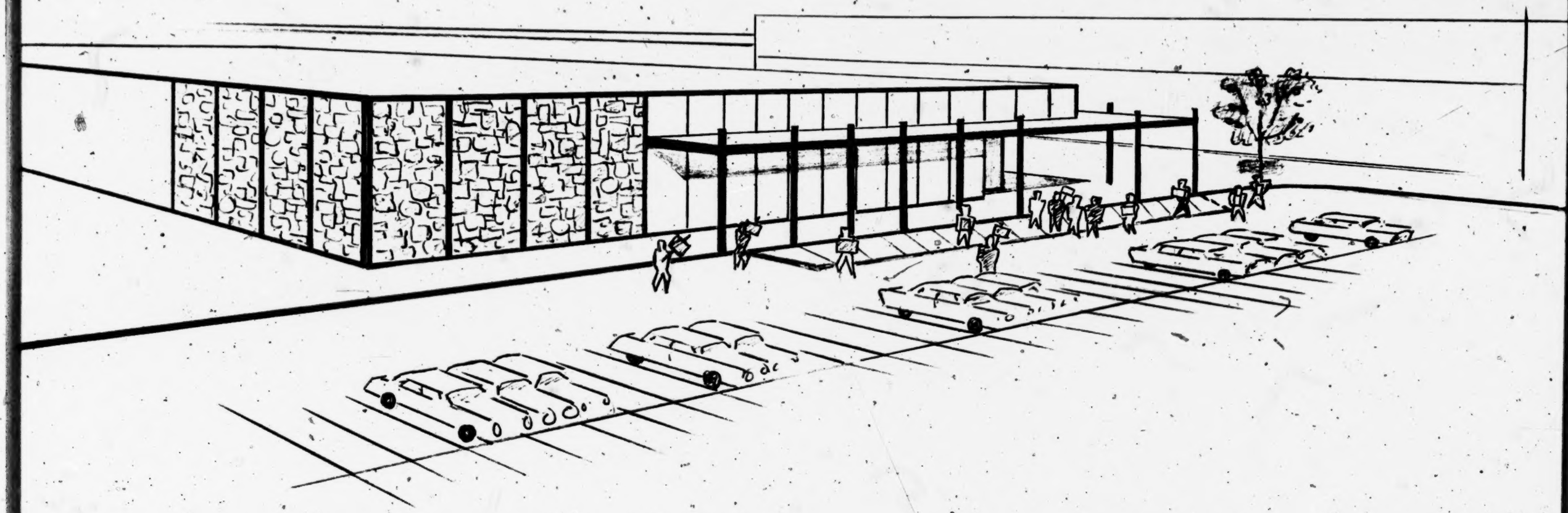
off with bold double yellow lines (R. 101, n.2, 55).[1] The words "Parcel Pick-Up" are printed in large letters. (See Photographs R. 84, 85.) *This zone is Weis property and is owned by Weis*, together with the store proper and porch adjacent thereto (R. 9; Order of Court, par. (a), R. 20; R. 33, 41, 42, 52, 101).

The pick-up area is used "strictly for customers to come and enter to pick up their parcels which they had purchased. . . . They drive (their automobiles) into this particular area, and there the groceries are loaded into the cars by (Weis employees) on . . . pick-up duty" (R. 29).

December 17th was a Friday. A witness described what occurred:

> "(I)t was a Friday night, which is quite busy." Cars were moving continuously in the vicinity of the parcel pick-up zone (R. 29).
>
> • • •
>
> The picketing was "causing congestion out there (in the parcel pick-up zone) and customers were milling around trying to get in as well as leave. After they had the groceries loaded in the car they had a problem of waiting until some of the pickets stepped out of the way (so) that they could leave the zone" (R. 30).
>
> • • •
>
> This required "constant navigating by customers in and out. . . ." One customer stated she had almost hit one of the pickets (R. 44).
>
> • • •
>
> The picketing took place "right where the cars will drive in for the groceries." The pickets "hindered"

[1] The Exhibits in the Appendix do not clearly or completely depict this area. A schematic, based upon the record in this case, follows this page.



PARCEL PICK-UP ZONE

4-5' x 30-40'

the cars from driving in, causing annoyance to the customers (R. 47).

The number of pickets varied from 4 to 13 (R. 102). During the afternoon of December 21st, "13 were there . . . walking four abreast many times" (R. 47). None of the pickets were employees of Weis (R. 38, 89). Twelve of the pickets were employed at three A & P stores in the area, two were employed at the Acme store, and one at the Quaker store (R. 66, 67).

The avowed purpose of the picketing was to inform the public that the employees of Weis at this store were not members of its union (R. 23, 29, 54). It was testified that "Weis Markets (was not) involved in a labor dispute" with the union (R. 37) and the trial court found that "the Weis supermarket is not engaged in labor trouble" (R. 92).

Weis' Assistant General Superintendent advised the pickets that they were picketing on private property. He called their attention to the no-trespassing sign, and requested that they picket on the berms of the road. The berms separate the parking lot from the respective highways, and are approximately 12 and 15 feet in width (R. 35, 37, 101). The pickets refused (R. 32, 33).

Thereupon, on December 27, 1965, Logan and Weis filed a complaint with the Court of Common Pleas of Blair County, Pennsylvania (hereinafter referred to as the trial court). The court on the same date issued an injunction restricting the picketing to the public berms (R. 19-21, 102, n. 4).

Thereafter, the picketing continued on the berms at each of four entrances to the shopping center (R. 32, 39, 64), with one or two pickets at each entrance, depending on the number available to picket (R. 62). In addition to

picketing on the berms, the pickets also picketed across the driveway of the entrances and exits leading to the general parking area (R. 75).

On January 4, 1966, a hearing was held at which testimony was taken (R. 27). On February 16, 1966, the trial court ordered that the preliminary injunction theretofore issued be "continued until further adjudication of the case" (R. 4). On March 21, 1967, the Supreme Court of Pennsylvania affirmed (R. 5, 106). On October 23, 1967, this Court granted certiorari.

Summary of Argument

The issue is simple. A retailer builds his own store on his own land in a shopping center. On his property, he provides a parcel pick-up area for use by his customers. A union seeks to picket him. Must the retailer suffer the conversion of the *pick-up* area to a *picket* area?

This simple issue is before this Court as a result of an Order of the trial court, issued after a full hearing (R. 99, 100).

The Supreme Court of Pennsylvania, in affirming the trial court, summarized the Order's prohibitory aspects as follows:

"That injunction restrained the Union from:

1. picketing and trespassing on Weis' property, i.e., the store proper, the porch and the parcel pick-up area;
2. picketing and trespassing upon Logan's property, i.e., the parking area and entrances and exits thereto;
3. physically interfering with Weis' business invitees entering or leaving the store or parking area;

4. violence toward Weis' business invitees;

5. interference with Weis' employees in the performance of their duties" (R. 102).

The union's position, in the courts below, and here, may be ascertained from what it has stated, as well as what it has left unsaid.

Activity Restrained	*Union's Position on Restraint*
(1) Picketing	
a. inside the store	No expressed disagreement
b. on the porch	No expressed disagreement
c. within the parcel pick-up area	Expressed disagreement
(2) Picketing	
a. in the parking area	Expressed disagreement
b. on the entrances and exits to parking area	Expressed disagreement[2]
(3) and (4) Physical interference with and violence toward Weis' business invitees	No expressed disagreement
(5) Interference with Weis' employees	No expressed disagreement

[2] However, the union interpreted the court's order to permit picketing across the driveways of the entrances and exits (R. 77-78). Accordingly, the union instructed its pickets to walk across these driveways (R. 75). This interpretation and instruction were not objected to. Consequently, the court's restraint in (2)b was never enforced.

Picketing Inside the Store

The union has not expressed disagreement with the trial court's injunction against picketing inside Weis' store. It has not commented, either affirmatively or negatively. The National Labor Relations Board has. In its *amicus* brief, it stated:

> "Assume, for example, that outside organizers or pickets entered the selling area of the Weis store and disrupted its business. . . . (T)he State would not be barred from acting. . . ." (Brief, p. 17.)

Picketing On the Porch

The union has not expressed disagreement with the statement of the Supreme Court of Pennsylvania that they "do not construe the Union's position to be that picketing on the porch of the Weis' property did not constitute a trespass" (R. 103, n. 5).

Picketing In the Parking Area

It is uncontroverted that no picketing took place in the general parking area. Although the union expressed disagreement with the trial court's barring it from engaging in picketing in the general parking area, if it chose to do so in the future, *the union at no time suggested this area as an alternative to picketing within the parcel pick-up zone.* Its position was that it should be permitted to continue to picket "at the Weis Market area" (R. 53).

The Question To Be Decided

Thus, stripped of all rhetoric, the narrow issue is simply this: "(I)n the factual matrix of the case at bar" (R. 104) should the trial court be prohibited from reasonably regulating picketing which occurred within Weis' wholly-owned parcel pick-up zone?

Questions Not Before This Court

Thus, this Court is not asked to decide whether, under any and all circumstances, a state court may regulate picketing within a shopping center.[3] Nor is it necessary in this case to decide whether picketing in the general parking area of a shopping center is subject to regulation, for none took place. It is respectfully submitted that this case of first impression calls for a narrow decision based squarely on the narrow issue tendered.

In the light of the *amici* briefs filed by the American Civil Liberties Union, the Retail Clerks International Association, and the American Federation of Labor and Congress of Industrial Organizations, it is important to further clarify what is *not* at issue in this case.

The *American Civil Liberties Union* argues in support of "the union man fighting for the right to bargain collectively . . . the Negro fighting for a job . . . the housewife fighting an inexplicable rise in the price of eggs. . . ." (Brief, p. 8.) But, of course, the rights of such disputants are not in issue in this case. This Court only "deal(s) with concrete and specific issues raised by actual cases . . . not with . . . theoretical disputes." *Allen-Bradley Local 1111, United Electrical Workers* v. *WERB,* 315 U.S. 740, 746. Additionally, "courts deal with cases upon the basis of the facts disclosed, never with nonexistent and assumed circumstances." *Associated Press* v. *NLRB,* 301 U.S. 103, 132.

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[3] An attempt to do so would present insuperable problems. The size, shape, structure, depth, and height of present day shopping centers vary. No two are alike. (See the *amicus* brief of R.C.I.A., p. 5: "Shopping centers vary in size. The shopping center in the instant case has 17 stores. . . . Many shopping centers have paved streets, traffic signs and traffic lights, (and) sidewalks. . . .") *What may be reasonable regulation of picketing in one case may be unreasonable in another.*

The *Retail Clerks International Association* argues that "it is . . . concerned about the right of *unorganized* (emphasis in original) workers in shopping centers to receive information from unions. . . ." (Brief, p. 3.) It asserts that "the instant case is typical" of a situation where a union seeks access to privately-owned shopping centers "to communicate with employees." (Brief, p. 9.)

The right of unions to communicate with employees, organized or unorganized, is not in issue here. Repeatedly, the union in this case has asserted that the picketing was directed toward members of the public (actual or prospective Weis customers), rather than to Weis' employees (See *infra*, pp. 43-44).

The *American Federation of Labor and Congress of Industrial Organizations* opens its argument with the statement that "in the instant case the Pennsylvania courts have used the State's trespass laws to . . . immunize (Weis) . . . from peaceful picketing and handbilling. . . ." (Brief, p. 2.) It then discusses this Court's decisions involving handbilling, acknowledging, however, ten pages later, that *"this case involves dissemination of views to the general public through placards held aloft, i.e. picketing,* and the cases just discussed dealt with the circulation of handbills." (Brief, p. 11.) (Emphasis added.)

Of course this latter statement was correct, and the opening statement incorrect. The trial court did not regulate handbilling. At the time of the filing of this suit the only activity engaged in by the union was picketing.[4] Consequently, the only relief sought and the only relief

[4] This point was made by the union in its brief to the Supreme Court of Pennsylvania: "We would also respectfully point out that the only testimony in the record with regard to handbills is found at page 58a where it is made clear that no literature was passed out to the public by the pickets while they were picketing within the shopping center area, in fact, the handbill referred to by the lower court was not, as we recall,

granted involved picketing. The question of handbilling is not before this Court.[5]

The Narrow Issue to be Decided—
Picketing in the Pick-Up Zone

Thus, we return to the narrow issue of whether this union must be permitted to picket within Weis' parcel pick-up zone. The union claims this right because of its asserted effectiveness in conveying its message to the public. This is a matter of conjecture. But it is not conjectural that the union effectively disrupted Weis' business when its thirteen pickets marched four abreast in the pick-up zone.

The National Labor Relations Board concedes that had the picketing taken place within the selling area of the Weis store, disrupting its business, it could have been enjoined by the State. There is no less a disruption of business when pickets interfere with the entrance of customers into the pick-up zone, interfere with the placing of purchased merchandise in automobiles, and interfere with the exit of customers from the zone.

The duties of Weis' employees require them to work in the parcel pick-up zone, loading merchandise into the customers' automobiles (R. 29). The interference of the pickets with these duties was as much a disruption of business

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even introduced into evidence." (Brief for Appellants, p. 13, a copy of which was lodged with this Court on November 20, 1967; to the same effect, see Brief for Petitioners, p. 7.)

[5] Similarly, the AFL-CIO's reliance on *Marsh* v. *Alabama*, 326 U.S. 501, is inapplicable. As its *amicus* brief notes at p. 8, the *Marsh* case "dealt with the power of a state to apply its trespass law to prohibit *handbilling* on a street in a company owned town. . . ." (Emphasis added.) Furthermore, there are numerous distinctions between a company owned town and the shopping center in this case. One obvious distinction is that the owners of a company town, unlike the owners of a shopping center, can regulate the full spectrum of human activity, since the inhabitants of the town may never have occasion to leave it.

as interference with the performance of their duties within the store. In fact, it was this very interference which the trial court enjoined, namely:

> "(f) Physically interfering with . . . the plaintiffs employees from performing their duties . . ." (R. 21).

Incontrovertibly, Weis' business was disrupted when the thirteen pickets "caused congestion" and "milling around by customers who were trying to get in as well as leave" (R. 30).

Its business was disrupted when the pickets, "marching abreast," (R. 32) "hindered" automobiles and "annoyed" customers (R. 47).

Its business was disrupted when the pickets forced customers to "navigate in and out" to avoid hitting them (R. 44).

By December 27th, a crisis had been reached. Weis' predicament had become intolerable. If its newly opened store were to remain open, it had to seek immediate relief.

The Law

We submit that the trial court acted in the proper exercise of its equity jurisdiction. The Commonwealth of Pennsylvania should not be foreclosed from fulfilling its obligation to protect the private property and business of its citizens.

There can be no doubt that "a state is not required to tolerate in all places and all circumstances even peaceful picketing . . .," *Bakery Drivers Local 802, IBT* v. *Wohl*, 315 U.S. 769, 775 (concurring opinion), and that a state may enjoin peaceful picketing in enforcement of its public policy. Certainly, state power to "constitutionally enjoin

peaceful picketing . . .," *International Bhd. of Teamsters* v. *Vogt, Inc.,* 354 U.S. 284, 293, was not abused by the issuance of the narrowly drawn injunction *allowing picketing,* but prohibiting it from a particular area.

This Court's primary concern in reviewing a state court injunction is to determine whether a proper balance has been struck between competing interests. *International Bhd. of Teamsters* v. *Vogt, Inc., supra* at 289-90. The trial court recognized that "we do not have the right totally to prohibit the picketing of Weis supermarket . . ." (R. 96). However, the court correctly believed that it was "invested with authority to balance the equitable considerations and to impose reasonable controls . . ." (R. 96). The balance struck by Pennsylvania in the instant matter is eminently sound. The pickets were not directed to cease their activity, but merely to move it a relatively short distance away.

The trial court's balancing of the equities in the instant matter was an exercise of reasonable regulation and entitled to "weighty respect." In exercising such authority President Judge Klepser was able to draw upon his "knowledge and appraisal of local, social and economic factors," *International Bhd. of Teamsters* v. *Hanke,* 339 U.S. 470, 475, and his personal knowledge of the physical characteristics of the area (R. 50). The result was a narrowly drawn injunction, which permitted picketing at a readily available alternative area. *NLRB* v. *Babcock & Wilcox Co.,* 351 U.S. 105, 112.

The union argues, however, that the trial court was without jurisdiction to act because it was preempted. The union's claim of federal preemption was neither raised nor argued before the Pennsylvania Supreme Court and therefore, under this Court's holdings, this defense may not be raised here.

Assuming, arguendo, that the federal preemption question was not waived, the issue before this Court is whether this state court is preempted from reasonable regulation of picketing upon private property in the circumstances of *this case.* Within the narrow framework of the case at bar, the Pennsylvania courts were not preempted from exercising control. The complained of activity was not even arguably subject to the Labor Management Relations Act. Weis and Logan did not allege in their complaint that the union's activity was subject to the Act, and the union has failed to show that it was.

It is clear that there are many areas of labor activity which remain subject to state regulation. This Court has indicated that much is left to the states. *International Ass'n of Machinists* v. *Gonzales,* 356 U.S. 617, 619. The conduct in the instant matter is "deeply rooted in local feeling and responsibility" and therefore within the area subject to state regulation. In the instant matter, the Supreme Court of Pennsylvania expressed the Commonwealth's deeply rooted state interest in the preservation of private property.

Clearly, there was no transgression by Pennsylvania upon the national labor policy, as the conduct controlled by the lower court in the instant matter was merely conduct which "finds itself at that far corner of labor law where . . . federal occupation is at a minimum and state power at a peak." *Hanna Mining Co.* v. *District 2, Marine Engineers Ass'n,* 382 U.S. 181, 193, n. 14.

Under the facts of the instant case it cannot be argued that Congress intended this activity to be within the exclusive jurisdiction of the National Labor Relations Board. The judgment of the Supreme Court of Pennsylvania, therefore, should be affirmed.

POINT I

THE UNION'S PICKETING WAS SUBJECT TO REASONABLE REGULATION.

What is picketing? Is it speech, pure and simple? This Court has often considered this question, and has answered that "picketing (is) not .... the equivalent of speech. . . ." *Hughes* v. *Superior Court,* 339 U.S. 460, 465. It "is more than speech. . . ." *Building Service Employees Union* v. *Gazzam,* 339 U.S. 532, 537; *Bakery Drivers Local 802, IBT* v. *Wohl,* 315 U.S. 769, 776 (concurring opinion). It "cannot dogmatically be equated with . . . freedom of speech. . . . (It) is 'indeed a hybrid.'" *International Bhd. of Teamsters* v. *Hanke,* 339 U.S. 470, 474.

"'Picketing,' in common parlance . . . includes at least two concepts: (1) *patrolling,* that is, standing or marching back and forth or round and round . . . (2) *speech,* that is, arguments, usually on a placard. . . ." *NLRB* v. *Fruit & Vegetable Packers,* 377 U.S. 58, 77 (concurring opinion). (Emphasis added.)

"*(P)atrolling is, of course, conduct, not speech,* and therefore is not directly protected by the First Amendment." Mr. Justice Black concurring in *NLRB* v. *Fruit & Vegetable Packers, supra* at 77. (Emphasis added.)

In the present case the "conduct" of the pickets warranted regulation. As the record shows, picketing was carried on to such an extent that the orderly operation of the Weis business became an impossibility.

The parcel pick-up area is an essential operation of Weis' business. It is set apart for use by Weis' customers;

entrance by other vehicles is prohibited.[6] It has great customer appeal. Most of Weis' customers come to the center by car. After completing his purchase, the customer drives his car into the parcel pick-up zone and an employee loads the merchandise into the car. Thus, within seconds, packages may be taken from the store and loaded into the customers' cars. Customers are relieved of the burden of carrying heavy loads of groceries to a car parked some distance away.

The parcel pick-up area is an adjunct to the store. This parcel pick-up zone is actually part of the merchandising of the product. Its operation is as much an integral part of the store's operations as the stocking of the shelves, or the payment for purchases at the check-out counters. It is the place of last impression upon a customer; efficient handling of his purchases enhances the likelihood that he will return.

But on Friday evening, December 17th, the normally smooth functioning and efficient merchandising operation within the zone was disrupted by marching pickets, and its use significantly curtailed. Packages could not be loaded into vehicles; automobiles could not proceed through the area; pickets, employees and customers were placed in danger of bodily harm; and vehicles were abnormally backed-up for some distance awaiting service. All of this was a consequence of the "conduct" of the union's picketing. It was this "conduct" which required regulation. In doing so, the trial court preserved the "speech" aspects of the picketing by permitting its continuation at the berms.

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[6] The enforcement of this prohibition was illustrated when an A & P store manager sought to interfere with the ordinary functioning of this zone by parking and leaving his car there. The Weis employees working in the parcel pick-up area reported this to their supervisor, claiming that "Our pick-up zone is completely halted." The A & P manager was requested to remove his car immediately so that the zone could be reopened to customers (R. 30).

Thus, the "speech" element of the picketing remained unimpaired. Eight pickets continued to communicate their message to the public at the entrances to the shopping center (R. 62). And, as "the placards . . . (were) plainly legible to passing motorists" (R. 98), not a person could enter the shopping center without being aware of the message. The trial court concluded that, as a result, the union's audience was increased (R. 98).[7]

In addition, as stated in Brief for Petitioners, p. 7, "when picketing at the highway entrances began, leaflet distribution at these points was also commenced (R. 58-59)." Hence, the union's media of communication was further expanded. Its "freedom of speech" was not abridged; it was enlarged.

The union's claim that its sole objective was communication with the public, rather than interference with the store's operations, is belied by its actions. If its purpose was communication alone, one picket, with sandwich placards in front and back, would have been sufficient. Every prospective customer would have been communicated with. The physical presence of 13 pickets, marching four abreast, evidences the union's intention to disrupt Weis' business.

The claim of abridgment of constitutional rights should not be used as a shield for transgression of another's property rights. The law will not "sanction trespass in the name of freedom."[8]

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[7] This may be the reason why some unions always picket at the entrances to shopping centers.

[8] "(F)reedom of speech and of the press, do not sanction trespass in the name of freedom. We must remember that personal liberty ends where the rights of others begin." *State* v. *Martin*, 199 La. 39, 48, 5 So. 2d 377, 380; quoted in *Good* v. *Dow Chemical Co.*, 247 S.W. 2d 608, 611, *cert. denied*, 344 U.S. 805.

POINT II

THIS COURT WILL SUSTAIN STATE COURT INJUNCTIONS EFFECTUATING STATE PUBLIC POLICY.

This Court will sustain state court injunctions against peaceful picketing, where the state acts in enforcement of its public policy. There is "a broad field" in which the state can "constitutionally enjoin peaceful picketing" in enforcing its policy, *International Bhd. of Teamsters* v. *Vogt, Inc.*, 354 U.S. 284, 293, for "a state is not required to tolerate in all places and all circumstances even peaceful picketing." *Bakery Drivers Local 802, IBT* v. *Wohl*, 315 U.S. 769, 775 (concurring opinion).

This Court has emphatically rejected the claim that the "states (are) powerless to confine the use of this industrial weapon (peaceful picketing) within reasonable bounds."[9] *Carpenters Union* v. *Ritter's Cafe*, 315 U.S. 722, 725. On the contrary, "where . . . claims on behalf of free speech are met with claims on behalf of . . . the state to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain." *Carpenters Union* v. *Ritter's Cafe, supra* at 725-26. It will uphold such regulation where "the manner in which picketing is conducted . . . gives ground for its disallowance," *Hughes* v. *Superior Court*, 339 U.S. at 465-66, for "freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses." *Breard* v. *Alexandria*,

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[9] As this Court noted in *Giboney* v. *Empire Storage Ice Co.*, 336 U.S. 490, 498: "Neither *Thornhill* v. *Alabama, supra*, nor *Carlson* v. *California*, 310 U.S. 106, both decided on the same day, supports the contention that conduct otherwise unlawful is always immune from state regulation because an integral part of that conduct is carried out by a display of placards by peaceful pickets."

341 U.S. 622, 642. "The Constitution does not demand that the element of communication in picketing prevail . . ." over a state's public policy. *Hughes* v. *Superior Court,* 339 U.S. at 464.

This Court's primary concern in reviewing a state court injunction enforcing public policy is not so much a question of free speech, as a review of the balance struck by a state between picketing and competing interests of state policy. *International Bhd. of Teamsters* v. *Vogt, Inc.,* 354 U.S. 284.

In reviewing the balance struck by the state, this Court will not judge the wisdom of the state policy, *Building Service Employees Union* v. *Gazzam,* 339 U.S. 532, 536-37; *Giboney* v. *Empire Storage Ice Co.,* 336 U.S. 490; *Carpenters Union* v. *Ritter's Cafe,* 315 U.S. 722, 725; nor the wisdom of its exercise. *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.,* 312 U.S. 287, 298.

In *International Bhd. of Teamsters* v. *Hanke,* 339 U.S. 470, 477, this Court reaffirmed this rule:

> "Washington here concluded that, even though the (injunction) . . . entailed restrictions upon communication that the unions sought to convey through picketing, it was more important to safeguard the value which the State placed upon self employers, leaving all other channels of communication open to the union."
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> "It is not our business even remotely to hint at agreement or disagreement with what has commended itself to the State of Washington, or even to intimate that all the relevant considerations are exposed in the conclusions reached by the Washington Court. They seldom are in this field, so deceptive and opaque are the elements of these problems. That is precisely what is

meant by recognizing that they are within the domain of a State's public policy." 339 U.S. at 478.

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"*(A) State's judgment in striking such a balance is of course subject to the limitations of the Fourteenth Amendment. Embracing as such a judgment does, however, a State's social and economic policies, which in turn depend on knowledge and appraisal of local social and economic factors, such judgment on these matters comes to the Court bearing a weighty title of respect.*" 339 U.S. at 475. (Emphasis added.)

POINT III

THE BALANCE STRUCK HERE BY THE COMMONWEALTH OF PENNSYLVANIA SHOULD BE ACCORDED A "WEIGHTY TITLE OF RESPECT" AND ITS JUDGMENT AFFIRMED.

We start with the decision of the trial court. Did it follow this Court's teachings concerning the balancing of the interests of the parties and the exercise of reasonable regulation? Judge Klepser did just that when he said, speaking for the court:

> "(W)e are invested with authority to *balance the equitable considerations* and to impose *reasonable controls* . . ." (R. 96). (Emphasis added.)

In exercising such authority, Judge Klepser was able to draw upon his "knowledge and appraisal of local social and economic factors," *International Bhd. of Teamsters* v. *Hanke,* 339 U.S. 470, 475, and his personal knowledge of the physical characteristics of the area. He had undoubtedly passed by, or shopped in the shopping center. He knew, for example, which road was the most heavily traveled.[10] He could find, therefore, based upon personal observation, that "the placards or banners will be plainly legible to passing motorists on both highways" (R. 98). As such, his judgment is entitled to "weighty respect."

We proceed to the Supreme Court of Pennsylvania, which has the authority to announce public policy, and enforce it by "constitutionally enjoin(ing) peaceful picketing aimed

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[10] At the trial, union counsel commented: "I am sure the Court knows (which is the most heavily traveled road)" (R. 50).